FOOK YEW TIMBER CO. v. THE PUBLIC INSURANCE CO. LTD.

[O. C. J. (Ismail Khan J.) January 13, 1960]

[K. L. — Civil Suit No. 386 of 1958]

Insurance — Claim for indemnity — Policy covering group employees — Non-disclosure of material facts — Renewal of policy — Breach of warranty.

The plaintiffs, a firm of timber merchants, claimed a declaration that they were entitled to be indemnified by the defendants to the extent of $7,200 as compensation awarded to the dependants of one of their employees for personal injuries in the course of his employment. The defendants disclaimed liability on the policy of assurance on several grounds.

The first policy was taken for a period of 3 months on the footing of 6 employees at a premium of $264. One of the conditions for renewal attached to the policy was that the insured at the end of the insured period must report to the insurance company the year's actual payment of wages and number of employees. At the end of the term when the policy was renewed no such return appeared to have been made nor did the defendants insist upon its production before renewing the policy. In point of fact the plaintiffs employed 20 to 30 loading and unloading labourers.

Held: (1) as there was no evidence that the defendants were aware of the number of labourers employed and the facts which were withheld were known to and present to their minds at the time when they accepted the risk, the plaintiffs were not relieved of their obligation to disclose. It was the assured's duty to gather the facts together and present them to the insurers;

(2) the plaintiffs' statement as to the number of their employees was a warranty the breach of which avoided the policy.

Cases referred to:—

(1) *Bates* v. *Hewitt* (1866-67), L.R. 2 Q.B. 595, 607.

(2) *Leong Chee Yong* v. *China Insurance Co. Ltd.* [1952] M.L.J. 246.

CIVIL SUIT.

T. C. Tang for the plaintiffs.

N. A. Marjoribanks for the defendants.

Cur. Adv. Vult.

Ismail Khan J.: In this case the assured firm claim a declaration that they are entitled to be indemnified by the defendants to the extent of $7,200 awarded as compensation to the dependants of one of their employees Chow Hon alias Too How who succumbed on 4th November, 1956, to personal injuries sustained, arising out of and in the course of his employment.

The plaintiffs are a firm of timber merchants employing labour for felling trees and sawing timber and loading and unloading them to vehicles. The deceased who was a loading and unloading labourer was about 41 years old and upon enquiry the Workmen's Compensation Arbitrator awarded his dependants the sum aforesaid on the basis that the workman in question was earning on an average the total remuneration of $200 a month.

The defendants disclaimed liability on the policy of assurance on several grounds adverted to later.

The first policy was taken out on 24th April, 1956, for a period of three months, ending 20th July, 1956. The premium paid was $264 on the footing of six employees, and the proposal signed by one of the partners of the plaintiff firm only disclosed that they were employing a driver, an attendant, a general labour workman for felling trees, a workman for sawing timber and a workman for loading timber onto vehicles. There is no evidence to show that the policy was intended to cover only one particular labourer viz. the deceased, to the exclusion of others. It was probably the intention that during three months at a stretch no more than one labourer was likely to receive any injury and the policy would cover that particular labourer.

In point of fact, the plaintiffs according to their own admission employed 20 to 30 labourers for loading and unloading. During this period, however, no workmen received any injury.

One of the conditions for renewal attached to the policy of insurance was that the insured at the end of the insured period must report to the insurance company the year's actual payment of wages and the number of employees. In the agreed bundle of documents P1 page 21 that condition was left out but in any event it appears in the original.

At the end of the term when the policy was renewed no such return appears to have made nor did the defendants insist upon its production before renewing the policy. The policy was renewed upon a further payment of $264 presumably on the basis that the number of employees was constant, for three months as from 18th August, 1956. On the evidence, I am satisfied and it is not denied that the managing partner of the plaintiff firm who applied for renewal either in ignorance of the effect of the policy vitiated by non-disclosure or mis-statement or foolishness did not state the actual number of loading and unloading labourers that they had employed.

In the view I take of this claim it is not necessary for me to consider the plaintiffs' assertion before the Workmen's Compensation Arbitrator that the deceased was not one of their employees. It is admitted, however, that the deceased's name does not appear in the plaintiffs' wages book as he was being paid daily.

The Insurance Company's Agent P.W. 2 called on behalf of the plaintiffs, had no knowledge of the actual number of labourers employed by the plaintiffs nor was he at any material time informed of the actual number.

It is common knowledge that the quantum of premium is affected by the risk involved and one of the principles is "in the case of risks other than life, the assured is not given absolute right of renewal, the continuance of the policy being conditional not only upon payment of premium by the assured, but also upon the acceptance of it by the insurer. In any such case the insurers may terminate the risk at each renewal period by refusing to accept premium tendered". See

MacGillivray on Insurance Law 3rd edition page 464 - 465.

There is no evidence that the defendant company themselves were aware of the number of labourers employed and the facts which were withheld were known to and present to their minds at the time when they accepted the risk, and the plaintiffs were not relieved of their obligation to disclose. It is the assured's duty to gather the facts together and present them to the insurers.

Under the Workmen's Compensation Act 1925, the duty of the proposed assured is very extensive. He "may be required to state whether any of the workmen are members of his family, whether any of them possess physical defects and whether all his workmen are to be included in the insurance, if not the reason why all are not included, is to be given" the reason presumably being that the number of employees in common employment may affect the risk of injury. (*Welford Accident Insurance* 2nd edition page 583).

I am of the opinion that under the local Ordinance the duty cast on the insured is no less onerous.

The result flows from a contract *uberrimae fidei*. Cockburn C.J. in *Bates* v. *Hewitt*[1] stated the principle in clear and unequivocal terms "the rule we find established is this; that the person who proposes an insurance should communicate every fact which he is not entitled to assume to be in the knowledge of the other party; the assured is bound to communicate every fact to enable the insurer to ascertain the extent of the risk against which he undertakes to protect the assured . . . and it is also well established law that it is immaterial whether the omission to communicate a material fact arises from intention, or indifference, or a mistake, or from it not being present to the mind of the assured that the fact was one which it was material to make known" because as Mellor J. said "the risk run is really different from the risk understood and intended to be run at the time of the agreement".

In my view the plaintiffs' statement as to the number of their employees was as much a warranty the breach of which avoids the policy as non-disclosure by the auxiliary police inspector of his hazardous occupation in *Leong Chee Yong* v. *China Insurance Company Limited*,[2] decided by Thomson J. (as he then was).

There is also a provision in the policy for compulsory arbitration, but the action has not been resisted by the defendants on that ground.

The plaintiffs' claim stands dismissed with costs.

Claim dismissed.

Solicitors: *T. C. Tang & Co.; Lovelace & Hastings.*

LEE HUP NEO v. REG.

[A. Cr. J. (Rose C.J.) February 24, 1960]

[Singapore — Magistrate's Appeal No. 213 of 1959]

Gaming — Characters lottery — Modus operandi — Expert witness — Evidence of — Common Gaming Houses Ordinance (Cap. 114), s.4(c).

The appellant was convicted of assisting in carrying on a public lottery contrary to section 4(c) of the Common Gaming Houses Ordinance. Counsel for the appellant contended that there was no or no sufficient evidence adduced of the nature or *modus operandi* of the lottery from which it could reasonably be inferred that it was of a nature that fell within the meaning of the definition contained in the Ordinance. Moreover there was no evidence from which it could reasonably be inferred that a certain exhibit (P. 4), alleged to be a record of stakes relating to a characters lottery, in fact related to "a lottery" or "public lottery" within the meaning of the Ordinance.

Held: (1) description by expert witnesses of the *modus operandi* of the characters lottery are no longer necessary except where a Magistrate of his own accord and for his own further enlightenment requires such evidence. In view of the decision of the case of *Lee Seow* v. *Public Prosecutor*, [2] all that is now necessary is a description and explanation by the expert witness of the exhibits and a careful examination and consideration of them by the trial Magistrate in the light of the expert opinion to enable him to form his own independent judgment (*Choo See-Kean* v. *Public Prosecutor* [3] followed);

(2) in the present case although the expert witness did not give a description of the *modus operandi* of the lottery, he did describe and explain the exhibits and this explanation enabled the Court to form an independent judgment as to the matters in issue and in particular, as to the nature of the exhibit P. 4. Having regard to the evidence adduced and the opinion formed upon it by the learned Magistrate, he was entitled to come to the conclusion to which he did and to find the appellant guilty of the offence as charged, the appeal must therefore be dismissed and the conviction and sentence affirmed.

Cases referred to:—

(1) *Lee Yang Hee* v. *R.* [1959] M.L.J. 91.

(2) *Lee Seow* v. *Public Prosecutor* [1958] M.L.J. 245.

(3) *Choo Sec Kean* v. *Public Prosecutor* [1959] M.L.J. 213.

MAGISTRATE'S APPEAL.

H. F. Sheppard for the appellant.

A. W. Ghows (Crown Counsel) for the respondent.

Cur. Adv. Vult.

Rose C.J.: The appellant was convicted of assisting in carrying on a public lottery contra section 4(c) of the Common Gaming Houses Ordinance (Cap. 114).

Learned counsel for the appellant contends that there was no or no sufficient evidence adduced of the nature or *modus operandi* of the lottery from which it could reasonably be inferred that it was of a nature that fell within the mean-